

DRAFT REGULATION ORDER

Add Subchapter 4.1, Advance Payments, sections 91040 through 91044, title 17, California Code of Regulations, to read as follows:

Subchapter 4.1. Advance Payments

Article 1. General

§ 91040. Purpose.

Purpose. The purpose of this regulation is to ensure that advance payments of grants to programs supported by the California Air Resources Board shall only be used to support program purposes consistent with appropriate and prudent controls.

NOTE: Authority cited: Sections 39600, 39601, 39603.1 Health and Safety Code.

Reference: Sections 39600, 39601, and 39603.1 Health and Safety Code.

§ 91041 Definitions.

- (1) **“Advance Payments”** means payments to a grantee prior to, and in anticipation of, performance under a grant agreement.
- (2) **“Audit Findings”** means listed items in the report of an independent auditor performing financial or performance audits documenting where improvement is needed.
- (3) **“Available Fund Balance”** means the unobligated and unrestricted cash that a grantee has available for future commitments at the time of requesting the advance payment.
- (4) **“Budgetary Controls”** means the grant recipient has a system of controls in which the grant budgets are compared with actual spending, within the timelines of the grant budget and deliverables to ensure the grant and program objectives are being followed.
- (5) **“Days”** means calendar days.
- (6) **“District”** means a county or regional air pollution control district or a county or regional air quality management district.
- (7) **“Executive Officer”** means the executive officer of the California Air Resources Board or his or her designee.

- (8) **“Good Standing”** means:
- a. An entity is in compliance with all applicable requirements of, and is not subject to any form of sanction, penalty, suspension, forfeiture, or disciplinary action by the Internal Revenue Service or California Franchise Tax Board.
- (9) **“Liquidate”** means that all moneys for a specified project have been spent by the grantee for valid and eligible project invoices and administrative costs.
- (10) **“Material Changes”** means:
- a. A change in the structure of the entity that is expected to affect the grant. This includes a change in senior principal officers, Board Members, or key personnel with the potential to affect the completion of grant objectives, except in regard to air districts.
 - b. A change to the spending plan of twenty-five (25) percent or more in any line item in the spending plan.
- (11) **“Small Air District”** means all county or regional air pollution control districts and all county or regional air quality management districts with a population of less than four million (4,000,000) based on data from the California Department of Finance, Demographic Research Unit.
- (12) **“Spending Plan”** means an outline of how the advanced funds will be expended within the term of the grant agreement.
- (13) **“State Board”** means the California Air Resources Board.

NOTE: Authority cited: Sections 39600, 39601, 39603.1 Health and Safety Code.
Reference: Sections 39600, 39601, and 39603.1 Health and Safety Code.

§ 91042. Advance Payment Request Review Process.

- (a) All requests for advance payments must contain the information required by law, including in this Subchapter.
- (b) The Executive Officer or his or her designee will make the final determination to accept, modify, or deny an advance payment.

NOTE: Authority cited: Sections 39600, 39601, 39603.1 Health and Safety Code.
Reference: Sections 39600, 39601, and 39603.1 Health and Safety Code.

§ 91043. Advance Payment Criteria.

(a) *Requirements for small air districts.* To be approved for an advance payment, small districts must provide documentation to the Executive Officer demonstrating all of the following:

- (1) The advance payments, in the amount required, are necessary to meet the purposes of the grant program or project;
 - a) The advance payment is intended to alleviate a practical business or economic situation that would inhibit the program or project.
- (2) The use of the advance payment is limited to the specified activities approved for the grant.
- (3) Agrees to return all unused moneys to the state if they are not liquidated within the timeline specified in the grant agreement.
- (4) Shall not use the advance payments received to provide payments in advance to grantees, except to another air district.

(b) *Requirements for other air districts (air districts that are not small) and other entities.* To be approved for an advance payment, any other entity that is not a small district must provide documentation to the Executive Officer demonstrating that it meets all the requirements of paragraph (a) (1) through (3) and meet all of the following requirements:

- (1) The entity has no uncorrected material misstatement in financial audits that, in the view of the Executive Officer or designee, relate to any moneys eligible for advance payment;
- (2) Is in good standing with the Franchise Tax Board (FTB) and Internal Revenue Service (IRS). The entity must be in good standing with FTB and IRS at the time the advance payment request is made. If the entity falls out of good standing with FTB or IRS after an advance payment is made, but before the grant is completed, the Executive Officer or his or her designee may require the return of any unspent monies.
- (3) Has an appropriate spending plan.
- (4) Agrees to not provide advance payment to any other entity.

(c) *Spending Plan contents.* A spending plan, if required, must provide sufficient information for the Executive Officer or designee reasonably to conclude that the advance payment request is necessary to meet the purposes of the grant program or project and is adequately regulated by grant or budgetary controls, including but not limited to:

(1) A discussion of project schedules, timelines, milestones, and the grantee's fund balance for all state grant programs;

(2) A commitment to report any material changes to the spending plan within 30 days.

(d) *Additional requirements.* The Executive Officer or designee may request additional information from applicants if it is needed to ascertain whether an advance payment is appropriate under this subchapter or other governing law. This process may include audits as needed.

NOTE: Authority cited: Sections 39600, 39601, 39603.1 Health and Safety Code.

Reference: Sections 39600, 39601, and 39603.1 Health and Safety Code.

§ 91044. Severability

Each part of this subchapter is deemed severable, and in the event that any part of this subchapter is held to be invalid, the remainder of this subchapter shall continue in full force and effect.

NOTE: Authority cited: Sections 39600, 39601, 39603.1 Health and Safety Code.

Reference: Sections 39600, 39601, and 39603.1 Health and Safety Code.